

Exhibit 9

SARAH SIMMERS

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION

AWARE PRODUCTS LLC,

D/B/A VOYANT BEAUTY,

Plaintiff,

vs.

No. 4:21-cv-249-JCH

EPICURE MEDICAL, LLC,

FOXHOLE MEDICAL, LLC,

and LEE ORI,

Defendants.

_____/

REMOTE VIDEOTAPED DEPOSITION SARAH SIMMERS

ST. LOUIS, MISSOURI

TUESDAY, MARCH 29TH, 2022

REPORTED BY:

DEBORAH HABIAN, RMR, CRR, CLR

JOB NO. 208448

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3			3		
4			4	ON BEHALF OF THE PLAINTIFF	
5			5	SHER TREMONTE	
6	March 29, 2022		6	BY: ROBERT PENN, JR., ESQ.	
7	11:05 A.M. CST		7	90 Broad Street	
8			8	New York, New York 10004	
9			9		
10			10		
11	Remote videotaped deposition of		11	ON BEHALF OF THE DEFENDANTS	
12	SARAH SIMMERS, appearing at St. Louis, Missouri,		12	KORANTENG LAW FIRM	
13	USA, pursuant to notice, appearing remotely via		13	BY: FIBBENS KORANTENG, ESQ.	
14	Zoom conference before Deborah Habian, an		14	5050 Quorum Drive	
15	Illinois Certified Shorthand Reporter, Missouri		15	Dallas, Texas 75254	
16	Certified Court Reporter, Registered Merit		16		
17	Reporter, Certified Realtime Reporter, Certified		17		
18	Livenote Reporter.		18	ALSO PRESENT:	
19			19	Rudolfo Durand, TSG videographer	
20			20		
21			21		
22			22		
23			23		
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1	SARAH SIMMERS			1	SARAH SIMMERS		
2	THE VIDEOGRAPHER: Good morning,			2	Medical LLC, et al. Today is March 29, 2022.		
3	Counselors. My name is Rudolfo Durand. I am			3	The time is 11:05 a.m. Central Daylight Time,		
4	the legal videographer in association with TSG			4	and we're on the record.		
5	Reporting, Inc. Due to the severity of the			5	Will counsel please introduce		
6	COVID-19 and following the practices of social			6	yourselves.		
7	distancing, I will not be in the same room with			7	MR. PENN: Robert Penn for the		
8	the witness. Instead, I will record this			8	plaintiff Aware Products LLC, doing business as		
9	remotely. The court reporter, Debbie Habian,			9	Voyant Beauty, and my colleague Justin Sher may		
10	also will not be in the same room and will swear			10	be joining us from his firm Sher Tremonte.		
11	in the witness remotely.			11	MR. KORANTENG: This is Fibbens		
12	Do all parties stipulate to the			12	Koranteng, and I'm appearing for the defendants,		
13	validity of this video recording, the swearing			13	Foxhole Medical LLC, Epicure Medical LLC, and		
14	in of the witness, that it will be admissible in			14	Lee Ori.		
15	the courtroom as if it had been taken following			15	THE VIDEOGRAPHER: Will the court		
16	Rule 30 of the Federal Rules of Civil Procedure			16	reporter please swear in or affirm the witness.		
17	and the state's rules where this case is			17	THE REPORTER: Raise your right hand		
18	pending.			18	please.		
19	MR. KORANTENG: We do.			19	THE WITNESS: (Complying.)		
20	MR. PENN: Yes, plaintiffs do.			20	(Oath administered remotely.)		
21	THE VIDEOGRAPHER: Thank you. This is			21	THE WITNESS: I do.		
22	the start of media labeled number 1 of the			22	THE REPORTER: Thank you so much.		
23	remote video recorded deposition of Sarah			23			
24	Simmers in the matter of Aware Products LLC,			24			
25	doing business as Voyant Beauty vs. Epicure			25			

<p style="text-align: right;">Page 10</p> <p>1 SARAH SIMMERS</p> <p>2 SARAH SIMMERS,</p> <p>3 called as a witness herein by the plaintiff,</p> <p>4 having been first duly sworn remotely, was</p> <p>5 examined and testified as follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. PENN:</p> <p>8 Q. Good morning, Ms. Simmers. My name is</p> <p>9 Robert Penn. I represent the plaintiff Aware</p> <p>10 Products LLC, doing business as Voyant Beauty,</p> <p>11 who I will refer to today as "Voyant."</p> <p>12 I'd like to go through some -- a few</p> <p>13 ground rules. Have you been deposed before?</p> <p>14 A. I have not.</p> <p>15 Q. Okay. So today I will ask you a series</p> <p>16 of questions, and of course everything is</p> <p>17 recorded. The court reporter can only take down</p> <p>18 the verbal answers, so nods or shaking your head</p> <p>19 will not be a sufficient answer, so try to make</p> <p>20 a verbal answer, please.</p> <p>21 The reporter can only take down the --</p> <p>22 one person at a time, so we'll try not to speak</p> <p>23 over each other, although I know on Zoom it can</p> <p>24 be -- sometimes there's a little delay, so we'll</p> <p>25 try not to speak over each other.</p>	<p style="text-align: right;">Page 11</p> <p>1 SARAH SIMMERS</p> <p>2 I'll do my best to look to let you</p> <p>3 finish your answers, and if you could let me</p> <p>4 finish my questions, that would be excellent.</p> <p>5 A. Okay.</p> <p>6 Q. If you don't understand a question, you</p> <p>7 can ask me to -- you can tell me, you can ask me</p> <p>8 to rephrase.</p> <p>9 If you -- if I ask a question your</p> <p>10 counsel, Mr. Koranteng, may object today. Those</p> <p>11 objections are for the record, and you must</p> <p>12 still answer the question. So I'm going to ask</p> <p>13 the question, maybe just give a beat in case</p> <p>14 there's an objection, and then you can answer</p> <p>15 the question.</p> <p>16 If you need a break at any time, please</p> <p>17 let me know. We will try to accommodate those</p> <p>18 requests, of course, but I'll ask that you</p> <p>19 answer whatever question is pending at the time</p> <p>20 before we take a break.</p> <p>21 A. Okay.</p> <p>22 Q. Okay. Did you prepare for your</p> <p>23 deposition today?</p> <p>24 A. Yes.</p> <p>25 Q. How did you prepare?</p>
<p style="text-align: right;">Page 12</p> <p>1 SARAH SIMMERS</p> <p>2 A. I reviewed e-mails. That's the only</p> <p>3 preparation I did.</p> <p>4 Q. And were these e-mails e-mails produced</p> <p>5 by -- by your counsel?</p> <p>6 A. Yes.</p> <p>7 Q. When did you do your preparation?</p> <p>8 A. Yesterday.</p> <p>9 Q. And about how long was the preparation?</p> <p>10 A. An hour.</p> <p>11 Q. And you said you looked at e-mails.</p> <p>12 Did you look at any other documents?</p> <p>13 A. Just my Epicure Operating Agreement.</p> <p>14 Q. Today you understand that you're under</p> <p>15 oath today, correct?</p> <p>16 A. I do.</p> <p>17 Q. And that if you don't provide truthful</p> <p>18 answers, that would be considered perjury?</p> <p>19 A. I do.</p> <p>20 Q. Is there any reason that you cannot</p> <p>21 testify truthfully today?</p> <p>22 A. There's no reason.</p> <p>23 Q. So today we're obviously taking this</p> <p>24 deposition remotely because of -- partly because</p> <p>25 of the COVID situation, so I have a few</p>	<p style="text-align: right;">Page 13</p> <p>1 SARAH SIMMERS</p> <p>2 questions related to that situation.</p> <p>3 Is anyone in the room with you?</p> <p>4 A. No.</p> <p>5 Q. I would ask that if anyone enters the</p> <p>6 room at any time that you please let me know.</p> <p>7 A. Absolutely.</p> <p>8 Q. And are you looking at anything other</p> <p>9 than the screen upon which the deposition is</p> <p>10 being taken?</p> <p>11 A. Just the screen.</p> <p>12 Q. So I'd ask that you please don't look</p> <p>13 at anything else while we're on the record.</p> <p>14 A. Okay.</p> <p>15 Q. I'd like to please -- I'd like you to</p> <p>16 please answer all questions by yourself and that</p> <p>17 you don't look to anyone or anyone else to help</p> <p>18 in answering the questions.</p> <p>19 A. Okay.</p> <p>20 Q. If you cannot answer a question by</p> <p>21 yourself, let me know.</p> <p>22 I'd also ask that you agree not to</p> <p>23 communicate with anyone else besides me in any</p> <p>24 way while we're on the record.</p> <p>25 Do you agree to do that?</p>

<p style="text-align: right;">Page 18</p> <p>1 SARAH SIMMERS</p> <p>2 clinic pharmacy for Innovis, Innovis Health.</p> <p>3 Q. Would you spell Innovis, please?</p> <p>4 A. I-N-N-O-V-I-S.</p> <p>5 Q. And what was your -- what did your job</p> <p>6 entail at Innovis Health?</p> <p>7 A. I was the clinic pharmacist retail --</p> <p>8 more of a retail model dispensing prescriptions</p> <p>9 within the clinic for the primary care doctors.</p> <p>10 Q. And did you eventually leave that</p> <p>11 position at Innovis?</p> <p>12 A. I did.</p> <p>13 Q. What was your next position after that?</p> <p>14 A. I moved to Arizona and opened a</p> <p>15 compounding pharmacy.</p> <p>16 Q. Tell me what is a compounding pharmacy.</p> <p>17 A. A compounding pharmacy is where we make</p> <p>18 patients' prescriptions pursuant to a doctor's</p> <p>19 formulation that we work together on for a</p> <p>20 patient. It's customized to the patients.</p> <p>21 Q. What was the -- what is the name or</p> <p>22 what was the name of the pharmacy in Arizona?</p> <p>23 A. Customceutical Compounding.</p> <p>24 Q. And do you recall what year you</p> <p>25 established this pharmacy?</p>	<p style="text-align: right;">Page 19</p> <p>1 SARAH SIMMERS</p> <p>2 A. 2010, I believe. I believe my</p> <p>3 operating agreement is 2010, yes, I believe.</p> <p>4 Q. And are you -- well, it is</p> <p>5 Customceutical; is that correct?</p> <p>6 A. Customceutical.</p> <p>7 Q. Customceutical. Are you an owner of</p> <p>8 Customceutical?</p> <p>9 A. I am.</p> <p>10 Q. And are there any other owners?</p> <p>11 A. Yes.</p> <p>12 Q. Who are the other owners?</p> <p>13 A. James Birch.</p> <p>14 Q. And has he been an owner since 2010?</p> <p>15 A. Yes.</p> <p>16 Q. For Customceutical, do you -- does --</p> <p>17 do you operate in a retail space or how does --</p> <p>18 how do you dispense the products that you make?</p> <p>19 A. Customceutical is a retail pharmacy,</p> <p>20 yes. We dispense the prescriptions to the</p> <p>21 patient. We also did do some injectables to</p> <p>22 providers, but they were all patient-specific.</p> <p>23 Q. And can you just briefly explain the</p> <p>24 process for how you might produce a specific</p> <p>25 product? For example, does the doctor make a</p>
<p style="text-align: right;">Page 20</p> <p>1 SARAH SIMMERS</p> <p>2 request and then you fill the request?</p> <p>3 A. The doctor writes a prescription, yes,</p> <p>4 and we fulfill the prescription.</p> <p>5 Q. And is -- and you may have said this,</p> <p>6 and forgive me if I'm asking you again. Is</p> <p>7 Customceutical still operating?</p> <p>8 A. It is not.</p> <p>9 Q. Okay. When did it stop operating?</p> <p>10 A. November 4th of 2020.</p> <p>11 Q. Is there any reason that it stopped</p> <p>12 operating?</p> <p>13 A. Yes. It was -- we weren't making it</p> <p>14 because of the pandemic.</p> <p>15 Q. Besides Custom -- Customceutical, did</p> <p>16 you have any other work -- did you work at any</p> <p>17 other pharmacies or entities?</p> <p>18 A. Yes.</p> <p>19 Q. Can you tell me about those, please?</p> <p>20 A. I also am an owner in Scottsdale</p> <p>21 Professional Pharmacy.</p> <p>22 Q. Okay. What is Scottsdale Professional</p> <p>23 Pharmacy?</p> <p>24 A. Scottsdale Professional Pharmacy is a</p> <p>25 nonsterile compounding pharmacy.</p>	<p style="text-align: right;">Page 21</p> <p>1 SARAH SIMMERS</p> <p>2 Q. And what does a nonsterile -- what is a</p> <p>3 nonsterile compounding pharmacy?</p> <p>4 A. We make customized prescriptions</p> <p>5 pursuant to a prescription from a doctor</p> <p>6 specific for certain patients. This is</p> <p>7 noncommercial products. We make them, in</p> <p>8 essence.</p> <p>9 Q. How is -- how is the non -- how is the</p> <p>10 product that you produce at Scottsdale</p> <p>11 Professional different from what you produce</p> <p>12 with Customceutical?</p> <p>13 A. Customceutical was largely sterile</p> <p>14 products. Scottsdale Professional Pharmacy --</p> <p>15 and we do business as Customedico -- was</p> <p>16 nonsterile.</p> <p>17 Q. For a nonpharmacist, what's the</p> <p>18 difference between sterile and nonsterile?</p> <p>19 A. Sterile you inject; nonsterile, you</p> <p>20 don't.</p> <p>21 Q. Great. Thank you. Now, I know that.</p> <p>22 Okay. So you are an owner of</p> <p>23 Scottsdale Professional Pharmacy, and are there</p> <p>24 any other owners?</p> <p>25 A. There is not.</p>

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1 SARAH SIMMERS

2 A. What are you asking? If you could

3 rephrase that. I'm just not quite understanding

4 what you're asking me.

5 Q. You testified that customers were

6 looking for the gel product, so I'm just asking,

7 you know --

8 A. And that was information from Dan.

9 Yeah, that's what -- that's what the ask was.

10 So when you're trying to procure a product, you

11 want to procure what the customer wants. So if

12 they're asking for gel and not a liquid and

13 we're trying to find a manufacturer, you've got

14 to match that up. If I have a liquid, I'm not

15 going to sell it if that's not what the customer

16 wants.

17 Q. At the time in March 2020, do you know

18 if Epicure had any commitments for the sale of

19 sanitizer except for the one you mentioned

20 earlier?

21 A. Define "commitments."

22 Q. I think I would just see if you can

23 answer the question.

24 A. It's hard for me to answer that

25 question not truly understanding what you mean

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1 SARAH SIMMERS

2 don't know much more beyond that, just that Paul

3 has a lot of experience in manufacturing.

4 That's his background. So we engaged a

5 consultant to help us make a decision there, and

6 Paul -- so that's why we engaged Paul.

7 Q. And I'm not sure if you said this. Did

8 you have a role in choosing -- strike that.

9 Did you have a role in choosing Voyant

10 to manufacture hand sanitizer for Epicure?

11 A. I didn't. That was not my lane.

12 Q. And who, if you know, chose Voyant?

13 A. Ultimately, I don't know if it was Dan

14 or Lee, and I'm sure they did it together. I

15 don't know.

16 Q. You also talked about some of the

17 quality control that you did. Did you do the

18 quality control on products for a variety of

19 manufacturers?

20 A. No, but I do it in my day job. So my

21 role as it relates to that is my industry --

22 there was pharmacists in my industry that were

23 compounding sanitizer under the FDA guides.

24 Okay? We did not choose to do that because I

25 had this opportunity in Epicure. So I have --

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1 SARAH SIMMERS

2 by "commitment." There were people looking for

3 the product, yes, and this was the

4 specifications they were looking for a gel.

5 They were discussing sizes. It was so difficult

6 to find bottles, like, getting all of those

7 parts to line up to have a true customer you

8 needed to be able to bring them to what they're

9 asking for.

10 So you had -- you see it's the chicken

11 and the egg here in the sense that you had to

12 have what they want for that, yes, and if we

13 could get the commitments from procurement,

14 then, yes, you could have a commitment. Does

15 that make sense?

16 Q. Okay.

17 A. It's trying to get all that to line up,

18 and they did a lot -- they spent a lot of hours

19 at it.

20 Q. Okay. Shifting back to choosing

21 manufacturers of hand sanitizer, you said you

22 engaged a consultant, Paul, to assist Epicure

23 with that. And who is Paul?

24 A. Paul Hexsom is a relationship of Lee's.

25 I know they've known each other a long time. I

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1 SARAH SIMMERS

2 because of my day job and because there was the

3 guidance document put out by the FDA, I was

4 aware of what their requirements were for

5 quality. So my role, when it came to

6 manufacturers, I just said, "Guys, as long as

7 they're meeting the guidance documents, please

8 let me see the SDS."

9 I don't -- I won't put -- we won't put

10 our name on somebody or work with somebody that

11 we can't be sure, especially as professionals,

12 like, I just can't do that, that I can give

13 something to somebody that's not safe.

14 Q. You said that -- you made reference to

15 your day job. Are you referring to --

16 A. Yeah, I'm -- because I'm a pharmacist.

17 That's what I mean. I'm referencing the fact

18 that I'm a pharmacist.

19 MR. KORANTENG: You wait until he

20 finishes his question, then you answer.

21 THE WITNESS: Okay.

22 MR. KORANTENG: I think we're speaking

23 over each other.

24 THE WITNESS: Sorry.

25 MR. KORANTENG: Sorry.

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1 SARAH SIMMERS
2 THE WITNESS: Sorry.
3 BY MR. PENN:
4 Q. We'll start over a little bit. So you
5 made reference to your day job as a pharmacist.
6 Is that with Customedico?
7 A. Yes.
8 Q. Okay. So you testified, I believe,
9 that you -- you reviewed or inspected Voyant's
10 hand sanitizer product, a sample; is that
11 correct?
12 A. Yes.
13 Q. And you reviewed their safety data
14 sheet; is that correct?
15 A. Yes, sir.
16 Q. In terms of reviewing the product
17 sample, can you tell me how you -- what you used
18 to assess the sample?
19 A. I looked at the quality of the
20 container, I looked at how the product felt, I
21 looked at the safety data sheet in regards to
22 the contents.
23 Q. You also said you approved a label.
24 Was it -- this is labels for the bottles, you
25 mean?

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1 SARAH SIMMERS
2 spec, and I approved it.
3 Q. Okay. Just one more question on the
4 sample. Did the makeup of the sample, did
5 Voyant provide that or was there any input from
6 Epicure?
7 MR. KORANTENG: Objection, vague.
8 MR. PENN: Yeah, let me see if I can
9 ask it differently.
10 BY MR. PENN:
11 Q. Did Epicure request a sample of hand
12 sanitizer from Voyant?
13 A. I believe so, yes. I believe we
14 requested that. I didn't make the request, but
15 Epicure did. I don't know if it was Lee, I
16 don't know if it was Dan.
17 MR. PENN: Okay. Let me go to what's
18 going to be Exhibit 5.
19 (Simmers Exhibit 5 was marked
20 for ID.)
21 BY MR. PENN:
22 Q. Okay. Do you recognize this document?
23 A. (Reviewing document.)
24 It's an e-mail.
25 Q. Okay, and what is it?

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1 SARAH SIMMERS
2 A. Yes, sir.
3 Q. What was the process for approving the
4 labels?
5 A. What process did I go through? Can you
6 ask the question differently? Like, what do you
7 mean?
8 Q. Just, I guess, maybe start with a
9 general step-by-step in terms of how the labels
10 were approved. So did Voyant provide a sample
11 label to Epicure for its approval?
12 A. Yes, please. Yes, they sure did.
13 Q. Did Epicure have any input into what
14 was supposed to go onto that initial label
15 sample?
16 A. The only -- only from the design aspect
17 for the -- for Epicure's brand. The -- I would
18 say the monograph labeling came from Voyant.
19 Q. And once you received the label sample,
20 what did you need or what did you do to approve
21 it?
22 A. It -- I reviewed -- I reviewed the --
23 for correctness, basically. Did it match what
24 we provided them for the branding, yes, and it
25 did. I approved it. You had -- you had a label

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1 SARAH SIMMERS
2 A. I can see the top of it is an e-mail.
3 Q. Sure. Let me start over, back up a
4 little bit. This was produced by your counsel.
5 It's Exhibit 5. It's identified as DEF4811
6 through 4812. Let me show you first. It's two
7 pages in this document.
8 A. Okay.
9 Q. I can show you the first page, and let
10 me know if you can see all of it.
11 I'll go to the second page.
12 This exhibit is also in the chat if you
13 want to see it.
14 Okay. Do you -- do you recognize what
15 this is?
16 A. That's the LOI. It looks to be the LOI
17 we sent.
18 Q. Okay. And how did this LOI come about?
19 A. I understood from our calls that
20 Michael needed a placeholder until Epicure's was
21 formed. He needed a placeholder so we could
22 have our basically place in line, to hold our
23 place in line. So that's the LOI that Lee sent.
24 Q. And so you said Michael needed a
25 placeholder?

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1 SARAH SIMMERS

2 Q. All right. So you weren't implying

3 that somehow Lee Ori as a person sent the LOI,

4 were you?

5 A. No.

6 MR. PENN: Objection. Misstates

7 testimony.

8 BY MR. KORANTENG:

9 Q. Okay. Okay. So when Lee had submitted

10 the LOI on behalf of -- on behalf of Foxhole, in

11 what capacity was he submitting that LOI?

12 MR. PENN: Objection.

13 THE WITNESS: From what I understood,

14 it's -- it was a placeholder until Epicure was

15 formed.

16 BY MR. KORANTENG:

17 Q. And when Lee submitted the LOI for

18 Epicure, that was dated June -- I think

19 June 4th, that you had -- you and counsel had

20 discussed, do you understand -- what's your

21 understanding of the capacity in which he was

22 submitting that LOI?

23 MR. PENN: Objection.

24 THE WITNESS: As a manager of Epicure.

25 MR. KORANTENG: Okay. I don't think I

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1 SARAH SIMMERS

2 IN THE UNITED STATES DISTRICT COURT

3 EASTERN DISTRICT OF MISSOURI

4 EASTERN DIVISION

5 AWARE PRODUCTS LLC,

6 D/B/A VOYANT BEAUTY,

7 Plaintiff,

8 vs. No. 4:21-cv-249-JCH

9 EPICURE MEDICAL, LLC,

10 FOXHOLE MEDICAL, LLC,

11 and LEE ORI,

12 Defendants.

13 _____/

14 I hereby certify that I have read the

15 foregoing transcript of my deposition given at

16 the time and place aforesaid, consisting of

17 pages 1 to 135, inclusive, and I do again

18 subscribe and make oath that the same is a true,

19 correct, and complete transcript of my

20 deposition so given as aforesaid and includes

21 changes, if any, so made by me.

22 _____

23 SARAH SIMMERS

24 SUBSCRIBED AND SWORN TO

25 before me this ____ day

of _____, A.D. _____.

Notary Public

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1 SARAH SIMMERS

2 have any further questions, Robert.

3 MR. PENN: Okay. Give me -- let's just

4 go off the record for a couple minutes, please.

5 MR. KORANTENG: Okay.

6 THE VIDEOGRAPHER: The time is

7 3:33 p.m., and we're going off the record.

8 (Recess taken from 3:33 p.m.

9 to 3:36 p.m.)

10 THE VIDEOGRAPHER: The time is

11 3:36 p.m., and we're back on the record.

12 MR. PENN: I have no further questions.

13 THE VIDEOGRAPHER: The time is

14 3:36 p.m., and we're going off the record.

15 (Deposition concluded at 3:36 p.m. CST.)

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1 SARAH SIMMERS

2 REPORTER CERTIFICATE

3 I, Deborah Habian, a Certified

4 Shorthand Reporter within and for the State of

5 Illinois, do hereby certify:

6 That previous to the commencement of

7 the examination of the witness, the witness was

8 remotely duly sworn to testify the whole truth

9 concerning the matters herein;

10

11 That the foregoing deposition was

12 reported stenographically by me, was thereafter

13 reduced to printed transcript by me, and

14 constitutes a true record of the testimony given

15 and the proceedings had;

16

17 That the said deposition was taken

18 remotely before me at the time and place

19 specified;

20

21 That the reading and signing by the

22 witness of the deposition transcript was not

23 discussed within the body of this transcript;

24

25 That I am not a relative or employee of

attorney or counsel, nor a relative or employee

of such attorney or counsel for any of the

parties hereto, nor interested directly or

indirectly in the outcome of this action.

IN WITNESS WHEREOF, I do hereunto set

my hand this 8th day of April, 2022.

DEBORAH HABIAN, CSR, RMR, CRR, CLR
IL CSR NO. 084-02432
MO CCR NO. 1409